101ST CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
101-341

SPEAKER'S ACCESS TO INTELLIGENCE MEETINGS AND INFORMATION

NOVEMBER 9, 1989.—Referred to the House Calendar and ordered to be printed

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Mr. MOAKLEY, from the Committee on Rules,
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H. Res. 268]

The Committee on Rules, to whom was referred the resolution (H. Res. 268) to amend the Rules of the House of Representatives to clarify the right of the Speaker to attend any meeting and to have access to any information in the possession of the Permanent Select Committee on Intelligence, having considered the same, report thereon, with the recommendation that the resolution be adopted.

PURPOSE OF LEGISLATION

House Resolution 268 amends rule XLVIII of the Rules of the House to clarify the right of the Speaker of the House to attend any meeting and to have access to any information in the possession of the Permanent Select Committee on Intelligence.

COMMITTEE CONSIDERATION

The resolution was introduced by the chairman of the Permanent Select Committee on Intelligence (Mr. Beilenson) on October 18, 1989, and referred to the Committee on Rules.

On November 8, 1989, the committee held hearings and heard testimony from Representative Beilenson and Representative Hyde, the ranking minority member of the Permanent Select Committee on Intelligence.

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Following conclusion of the hearing, Representative Solomon offered four amendments to H. Res. 268, as follows:

The first amendment constituted the text of H. Res. 279, a resolution introduced by Representative Hyde, and would have added provisions requiring background investigations and secrecy oaths for all Members and employees of the Permanent Select Committee on Intelligence, and reduced the size of that committee to 13 Members from the current 19 Members. The amendment was rejected on a record vote of 3 yeas to 6 nays.

The second amendment would have added a provision reducing the size of the select committee to 13 Members. The amendment was rejected on a record vote of 3 yeas to 6 nays.

The third amendment would have added a provision requiring background investigations and estabishing procedures for granting security clearances for every Member and employee of the select committee. The amendment was rejected on a record vote of 3 yeas to 6 nays.

The fourth amendment would have added a provision requiring all Members and employees of the select committee to take a secrecy oath, and establishing a procedure for referring alleged violations of the oath to the Committee on Standards of Official Conduct. The amendment was rejected on a record vote of 4 yeas to 5 nays.

At the conclusion of consideration of amendments, the committee by voice vote ordered H. Res. 268 reported to the House, favorably, and without amendment.

BACKGROUND

Rule XLVIII, clause 7(c)(1) prohibits disclosure of information in the possession of the Permanent Select Committee on Intelligence unless the select committee votes to do so.

Clause 7(c)(2) provides that the select committee may make classified information available to Members and to other committees of the House under regulations approved by the select committee, and may allow Members of the House to attend closed meetings of the select committee. In the event information is disclosed, the Intelligence Committee is required to keep a written record showing which information was released, and to whom. Members and committees of the House receiving information are prohibited from disclosing it except in a closed session of the House.

The Speaker of the House, by longstanding tradition and practice, has had access to any information within the possession of the House or any of its committees, including the Permanent Select Committee on Intelligence. The Speaker appoints the members of the Intelligence Committee.

Two other Members of the bipartisan leadership, the Majority Leader and the Minority Leader of the House, are ex officio members of the Permanent Select Committee, with access to all information and meetings, but without vote.

By statute, the Speaker has been provided access to information on the most secret covert actions and other intelligence activities undertaken by the United States, information which is not available even to members of the Permanent Select Committee on Intel-

ligence except the chairman and ranking minority member, and the Minority Leader of the House.

Section 501 of the National Security Act (50 USC 413) referred to as "The Intelligence Oversight Act of 1980", makes the Speaker a member of the "Gang of Eight" required to be consulted by the President of the United States on the most sensitive covert operations and other intelligence matters in "extraordinary circumstances affecting vital interests of the United States." The other members are the Minority Leader of the House, the Majority and Minority Leaders of the Senate, and the chairmen and ranking minority members of the two Intelligence Committees.

In previous Congresses, the Speaker has had access to the Intelligence Committee pursuant to longstanding custom and practice. In the 101st Congress, the Permanent Select Committee adopted an interim resolution providing that the Speaker was entitled to have access to any information within its possession, and it agreed to seek a permanent rules change to codify this practice within the Rules of the House. H. Res. 268 would accomplish this.

The resolution would also exempt the Speaker's participation from the recordkeeping required when the committee releases information to other Members or to committees of the House.

H. Res. 268 would also clarify the anomalous situation in House rules which permit access to Intelligence Committee meetings and records by the Majority Leader and the Minority Leader as ex officio committee members, but do not mention the Speaker, who appoints the Members of the committee.

ANALYSIS OF LEGISLATION

The resolution consists of a single section which makes three amendments in clause 7(c) of rule XLVIII of the Rules of the House of Representatives.

The existing paragraph prohibits the disclosure of any information in the possession of the Permanent Select Committee on Intelligence to a Member, who is not a member of the select committee, or the attendance of any other member at meetings of the select committee. The committee may vote to waive either requirement and, in such a case, must maintain a record of use of its records.

The amendments made by the resolution would provide for the Speaker to be treated, for purposes of the rule, in the same manner as members of the select committee.

Paragraph (c) would permit the Speaker to attend meetings of the select committee and to have access to information in its possession.

Paragraph (b) would exempt the Speaker's use of records from the requirement that records be maintained on such disclosures, but the requirement does not apply to committee member use.

Paragraph (a) is a technical conforming amendment to the amendment made by paragraph (c).

MATTERS REQUIRED UNDER THE RULES OF THE HOUSE

Committee vote

Clause 2(l)(2)(B) of rule XI requires that each committee report to accompany any bill or resolution of a public character, ordered to

be reported by a recorded vote, to include the total number of votes cast for and against the reporting of the measure.

On November 8, 1989, the committee ordered House Resolution 268 reported to the House, by voice vote, a quorum being present.

Commttee cost estimate

Clause 7(a) of rule XI requires that each committee reports contain committee cost estimates.

Although that provision does not apply to the Committee on Rules, the committee examines the cost implicaitons of all matters it considers. The resolution (H. Res. 268) has no cost implications.

Congressional Budget Office estimates

Clause 2(l)(3)(B) of rule XI requires that each committee report contain any statement required by section 308(a) of the Congressional Budget Act.

Clause 2(l)(3)(C) of rule XI requires that each committee report contain any cost estimate and comparison prepared by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974.

Neither provision applies to a resolution amending the rules of the House, and the resolution will result in no changes in Federal expenditures, nor in any costs to State and local government.

Inflation impact statement

Clause 2(l)(4) of rule XI requires that each committee report contain a statement relating to the inflationary impact of the enactment of that measure.

There would be none.

Oversight findings

Clause 2(l)(3)(A) of rule XI requires that each committee report contain oversight findings and recommendations required pursuant to clause 2(b)(1) of rule X.

The committee has made no oversight finding.

Oversight findings and recommendations of the Committee on Government Operations

Clause 2(l)(3)(D) of rule XI requires that each committee report contain any oversight findings and recommendations made by the Committee on Government Operations pursuant to clause 4(c)(2) of rule X.

No such findings and recommendations have been received.

Advisory committees

Section 5(b) of the Federal Advisory Committees Act (Public Law 92-463), enacted as an exercise of the rulemaking power of the House, requires the report accompanying any bill or joint resolution to contain certain findings of the committee with respect to any advisory committee established by the legislation.

The section does not apply to the resolution, but it would create no such committee.

Comparative print

Clause 4(d) of rule XI requires reports from the Committee on Rules, on resolutions amending the Rules of the House of Representatives, to contain a comparative print indicating changes in the existing rules proposed by the resolution (H. Res. 268):

CHANGES IN THE RULES OF THE HOUSE OF REPRESENTATIVES MADE BY HOUSE RESOLUTION 268

For the information of the Members of the House of Representatives, changes in the Rules of the House of Representatives made by the House resolution, are shown as follows (existing matter proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing matter in which no change is proposed is shown in roman):

RULES OF THE HOUSE OF REPRESENTATIVES

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RULE XLVIII

PERMANENT SELECT COMMITTEE ON INTELLIGENCE

1. (a) * * *

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7. (a) * * *

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(c)(1) No information in the possession of the select committee relating to the lawful intelligence or intelligence-related activities of any department or agency of the United States which has been classified under established security procedures and which the select committee, pursuant to paragraphs (a) or (b) of this clause, has determined should not be disclosed shall be made available to any person by a Member, officer, or employee of the House except as provided in [subparagraph (2)] *subparagraphs (2) and (3).*

(2) The select committee shall, under such regulations as the committee shall prescribe, make any information described in subparagraph (1) available to any other committee or any other Member of the House and permit any other Member of the House to attend any hearing of the committee which is closed to the public. Whenever the select committee makes such information available *(other than to the Speaker),* the committee shall keep a written record showing, in the case of any particular information, which committee or which Members of the House received such information. No Member of the House who, and no committee which, receives any information under this subparagraph, shall disclose such information except in a closed session of the House.

(3) The select committee shall permit the Speaker to attend any meeting of the committee and to have access to any information in the possession of the committee.

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Changes in existing law made by the bill, as reported

Clause 3 of rule XIII requires the report to accompany a bill or joint resolution which repeals or amends existing law to contain a comparative print showing the changes made by the bill as reported.

The rule does not apply to the resolution.

Views of committee members

Clause 2(l)(5) of rule XI requires each committee to afford a three day opportunity for members of the committee to file additional, minority, or dissenting views and to include the views in its report. Although neither requirement applies to the committee, it always makes the maximum effort to provide its members with such an opportunity.

The following additional views were submitted:

ADDITIONAL VIEWS OF REPRESENTATIVES JAMES H. QUILLEN, GERALD B. SOLOMON, LYNN MARTIN, AND CHARLES PASHAYAN, JR.

House Resolution 268 is aimed at correcting an obscure anomaly in House Rule XLVIII (48), which concerns the organization and activities of the House Permanent Select Committee on Intelligence (HPSCI). As presently written, rule 48 denies routine access by the Speaker to HPSCI's proceedings and information. The Speaker would, like any other Member who does not serve on HPSCI, have his request for information be subject to a roll-call vote of the committee. And the committee, moreover, would be required to keep a written record of any such provisional information.

This anomaly in Rule 48 appears to be a sin of omission rather than commission. As presently written, Rule 48 provides for two designated leadership officials—the Majority Leader and the Minority Leader—to be ex officio members of HPSCI. No mention is made of the Speaker. We find this anomaly to be very surprising, particularly in view of the Speaker's unique Constitutional position which places him second in the line of succession to the Presidency.

Accordingly, we support the prompt passage of H. Res. 268. We believe the Speaker should have immediate access to any and all proceedings and information at HPSCI.

We also believe the time has come to take a careful look at the way in which HPSCI is structured. Much as we support H. Res. 268, we are concerned about the incremental tinkering with HPSCI that has taken place this year. H. Res. 268 represents the fourth modification with HPSCI's structure or operations to be pushed through since January.

First, the size of committee membership was increased by two, from 17 to 19. Republican Members on HPSCI acquiesced to this increase because they were told that another Democratic seat was needed to meet commitments by the Democratic leadership for assigning Members to the committee. Moreover, the previous ratio of 11 Democrats to 6 Republicans was too lopsided.

Second, H. Res. 213, which extended Mr. Beilenson's term as chairman of HPSCI to the end of the 101st Congress (beyond what otherwise could have been permitted under Rule 48), was enacted in July. We certainly had no objections to this procedure because Mr. Beilenson is a highly respected colleague with whom we are pleased to serve on the Committee on Rules. He has done a commendable job as chairman of HPSCI.

Third, the Speaker issued a written request that a member of his personal staff be given blanket access to all of HPSCI's proceedings and information. The staff member in question formerly served on the professional staff at HPSCI.

This request is, quite frankly, somewhat troubling. We believe that Rule 48 should have been amended, as H. Res. 268 seeks to do,

before such an arrangement between the committee and the Speaker's office was worked out. The fact that the Speaker's staff designee has also been placed on the HPSCI staff payroll, at minimal salary and with the surprising title of clerk, carries a vague suggestion that something unusual is going on.

We are also concerned that this arrangement may set a dangerous precedent that will encourage other Members of HPSCI who have leadership responsibilities or other committee assignments that involve the handling of intelligence data to seek the designation of additional staff positions for this purpose. In short, we believe the entire question of HPSCI's size, particularly the determination of an appropriate number of Members serving on the committee, needs to be addressed.

Fourth, and finally, there has been the introduction of H. Res. 268. Again, we will state our support for this resolution. It will serve to rectify an anomaly, the nature of which was a surprise to us and, we suspect, will be to most Members.

But we must reiterate our concern about the appearance of H. Res. 268 within the context of a series of piecemeal changes being made in HPSCI's structure and operations. Plausible though some of these changes may be on their own merits, there is always the need to protect HPSCI's integrity against any taint of political coloration. We are concerned further about the possibility that yet another proposal, H. Res. 258, which revises the length of service for Members of HPSCI, will be acted on this year or early next year.

It seems to us that the time has come for a comprehensive assessment of what these and other changes have meant at HPSCI. If any Member is convinced that incremental tinkering with HPSCI's structure and operations has served to stem the flow of damaging leaks from Congressional sources, that Member has not been heard from.

Earlier this month, for example, a book was published which purports to contain the details of an egregious leak of highly sensitive intelligence data concerning U.S. policy in Central America. We have no way of knowing if this particular account is true. And even if we did know, we would not make any statement that would tend to corroborate it one way or the other. But we are appalled at cases such as this when Members of Congress are cited by name in the public media as sources of leaked information.

We had hoped that the consideration of H. Res. 268 on the floor of the House would have provided an opportunity to discuss some of the broader issues affecting HPSCI. When the Committee of Rules received testimony on H. Res. 268, the ranking Republican on HPSCI, Mr. Hyde, made a very compelling presentation about some of these larger issues. We are encouraged by the expressed willingness of the chairman of the Committee on Rules, Mr. Moakley, and of HPSCI, Mr. Beilenson, to hold hearings on these matters early next year.

For the benefit of our colleagues, we will give a brief summary of the three specific issues Mr. Hyde identified as having particular relevance to any comprehensive review of HPSCI's performance. We believe his proposals deserve thoughtful consideration by all Members.

COMMITTEE SIZE

Mr. Hyde recommends returning HPSCI to its original size of 13 Members. He also proposes a party ratio of 7:6. Both of these proposals could be realized at the outset of the 102nd Congress purely by attrition. No Member currently serving on HPSCI would have his or her term of service terminated prematurely.

As members of the minority party, we are particularly sensitive to the problem of unwarranted partisanship intruding on vital and delicate matters of state. We were thus gratified to hear Mr. Hyde tell the Committee on Rules that the original chairman of HPSCI, our former colleague Mr. Boland, has recently reiterated his belief that HPSCI should have been established with parity of membership between the two parties. A 7:6 ratio, with the majority party guaranteed a one-vote edge, would be consistent with the Senate Intelligence Committee and should be considered as a means of restoring the bipartisanship which was intended when HPSCI was first established.

SECRECY OATHS

Whatever the size of the committee may be (and it stands to reason that the mathematical probability of leaks, whether advertent or not, is diminished with fewer Members), Congress should consider what can be done to reinforce the seriousness of responsibility which membership on HPSCI confers. Mr. Hyde suggests that a formal oath of secrecy be taken by all Members on HPSCI and the committee staff. Such an oath, which would be published in the Journal of the House and the Congressional Record, would be a pledge not to disclose, directly or indirectly, any classified information to any unauthorized person.

There is a fascinating historical precedent for such an oath that goes all the way back to the earliest days of our Republic. The Second Continental Congress established a Committee on Secret Correspondence for purposes of receiving information about the conduct of the war of independence against Great Britain. The committee's most noted member was Benjamin Franklin, a respected civil libertarian if ever there was one. If Franklin had no qualms about signing such an oath, why should we?

Even more interesting is the fact that Thomas Paine was fired from a staff position with the Committee on Secret Correspondence after he leaked information concerning French military support for the American cause. His other distinguished contributions to the American Revolution notwithstanding, Paine violated his secrecy oath and was let go.

BACKGROUND CHECKS

Another way of reinforcing the point that service on HPSCI confers a special responsibility on Members and staff could be to require background checks and the issuance of security clearances for all persons at the committee. Mr. Hyde recommends a House-administered security clearance program that would utilize standards and procedures comparable to those used by the Executive branch, but with flexibility to accommodate any special considerations or circumstances that pertain to Congressional operations.

All of these proposals deserve serious consideration. Other Members will undoubtedly have contributions to make. The point is simply this: A comprehensive review of HPSCI's performance is long overdue. Piecemeal changes in HPSCI's structure and operations, however plausible these changes may be on their individual merits, are no substitute for thoroughgoing examination of the process by which the House of Representatives handles extraordinarily sensitive data affecting the essential security of our country.

JAMES H. QUILLEN.
JERRY SOLOMON.
LYNN MARTIN.
CHARLES PASHAYAN.

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